

**THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO  
THE MONTANA UNIFORM ARBITRATION ACT**

**1. PARTIES**

The Montana Department of Corrections (Department) and the **11th Judicial District** (Participating District) enter into this Agreement (**06-030-YSD**). The parties name, address, and telephone number are as follows:

Montana Department of Corrections  
Youth Services Division  
1539 11<sup>th</sup> Avenue  
P.O. Box 201301  
Helena, Montana 59620-1301  
(406) 444-3930

*11th Judicial District  
800 S Main St  
Kalispell MT 59901  
758-5541 Ext 41*

**THE DEPARTMENT AND THE PARTICIPATING DISTRICT, AS PARTIES TO THIS AGREEMENT AND IN CONSIDERATION OF THE MUTUAL PROMISES CONTAINED HEREIN, AGREE AS FOLLOWS:**

The Department hereby enters into an Agreement regarding the establishment of an Intervention in Delinquency Program (hereinafter referred to as the IDP) established through the authority of Senate Bill 386 in the 2001 Legislative Session with the **11th Judicial District Chief Probation Officer and District Youth Judge**. Said Program shall be conducted in accordance with the appropriate Administrative Rules of Montana (ARM) and the Montana Youth Court Act, and applicable Department policies and procedures regarding placement of youth in out of home facilities and programs, as well as policies and procedures regarding expenditures of Department funds for placement and intervention services for youthful offenders. The purpose of this Agreement shall be to provide an alternative method of funding youth (youth as defined in 41-5-103 (43) MCA) placement and services, to increase the ability of local government to respond to juvenile delinquency through early intervention and expanded community alternatives, to enhance the ability of local government to control costs, as well as appropriate placement of youth with serious mental illness as per statute 41-5-2006(1)(k), MCA.

**2. DUTIES/RESPONSIBILITIES OF THE PARTICIPATING DISTRICTS**

To ensure that youth are provided appropriate services in the least restrictive and most appropriate environment, including psychiatric placements when needed, and that local community alternatives are prioritized whenever possible, the Participating District agrees to cooperate fully with Department policy and procedures such as:

- A. Utilization of the Youth Placement Committee referral and review process in accordance with law and ARM.
- B. Utilization of an approved assessment and outcome instrument, in accordance with law and ARM, for the measurement of risk assessment and treatment/intervention effectiveness for all youth that the court intends to place in out of home placement.

- C. Timely documentation and entry of all services and placements on the CAPS system. Alternative systems of service monitoring and payment processing may be substituted if mutually agreed upon by the Youth Court Probation Office and the Department. Timely entry on the CAPS system shall be construed as entry within thirty (30) days of commencement of services. Changes of placement or closure of services shall be entered within five working days of the action.
- D. The submission of quarterly reports to the Department or Department liaison. Reports shall be completed on the Department provided form. Reports will be incorporated by the Department in the legislative monitoring and reports to the legislature required by SB386. The Department must receive such reports no later than 30 days from the last day of each fiscal year quarter. The first such report will be due no later than October 30, 2005.
- E. Participate in the 60<sup>th</sup> Legislative session by preparing summary reports for the Department and the Legislature relative to the outcome measures used by the Participating District, expenditures of initially allocated and prevention incentive funds, development of programs and interventions, and placements of youth in out of home care.
- F. Cooperate with, participate with and appear before the Cost Containment Review Panel when requested to do so. Participating Districts shall submit quarterly fiscal reports to the Cost Containment Review Panel Chair, upon request, for review at quarterly Panel meetings. Upon request of the Panel, the Chief Probation Officer shall be required to appear before the Panel to request supplemental funding from the cost containment funds if the quarterly fiscal reports indicate a projected judicial district allocation deficit. The Panel may require appropriate placement and expenditure documentation and a cost containment plan to be submitted to the Panel by the Chief Probation Officer before allocation of cost containment funds.
- G. Find alternative placements for youth found to be suffering from a mental disorder per 41-5-1504, MCA.
- H. Meet, as requested, with Department staff, Liaison/Financial Advisors, and the Cost Containment Panel. Such meetings may be for the purpose of keeping all parties to this Agreement fully informed of all Participating District activities.

### **3. DUTIES/RESPONSIBILITIES OF THE DEPARTMENT**

The Department agrees to provide the following:

- A. Allocation of available funding based on 2004 Crime Data – Juvenile Offenses (incorporating 50% of status offenses), Free and Reduced Lunch Program for school year 2004-2005 to determine Poverty Status, and 2002 Population Census – Youth Ages 5-17. The Youth Services Division will provide each participating District with the applicable data and allocation formula used. Second year funding and allocations may be readjusted as necessary. Funding shall be for the purpose of funding direct services to youth referred to or committed to the Youth Court. Placement services, intervention and diversion services, and development of community programs provided to youth and families through the Juvenile Probation Office shall also be funded from this Participating District allocation. The Department may only withhold funding or payment approval from a Participating District if the Department finds that the Participating

District has been or is in substantial non-compliance with MCA, ARM, Department Policies and Procedures, or this Agreement.

- B. Appropriate placement of offenders in Pine Hills and Riverside Youth Correctional Facilities, as well as other facilities or programs that contract with the Department for the purpose of providing a secure correctional program at no cost to the Participating District's funding allocation. Youth may not be placed at Pine Hills or Riverside Youth Correctional Facilities if they are found to be suffering from a mental disorder per 41-5-1504, MCA or are sex offenders with IQs of 80 or below. Any placement in a program or facility under Department contract that request services or placement outside of the Department contract may be made by the Participating District provided such placements or services are funded through the Participating District's allocation or are funded from other public or private sources.
- C. Funding of all youth committed to the care and custody of the Department under Section 41-5-1513, MCA for placement in a State Youth Correctional Facility and who are placed in out of home care by the Superintendent of that facility, by the supervising Juvenile Parole Officer or the Administrator of the Youth Services Division. The Department shall provide funding for services and placements for all youth that fall under Sections 41-5-1523(1), MCA and Title 52 Chapter 5, MCA.
- D. Printouts of District expenditures upon the request of each Participating District, including projected expenditures for all youth known by the Department to be in placement. Expenditure projections based on prior month data entry will be provided to each participating District no later than the 15<sup>th</sup> day of the month.
- E. Authorization of funds for services rendered when the CAPS system is mutually agreed upon as not appropriate to use.
- F. Training in all areas related to this Agreement that pertain to the process or procedures of placement, service payments, program accountability and outcome measurements, or matching and location of residential placement options.
- G. Technical assistance by the Department staff as available to the Participating District staff in the administration of this program. This shall include, but not be limited to, the Regional Administrative Officers assisting in providing direction and assistance in accessing alternative or third party funding, accessing mental health and Medicaid services, and the Youth Community Corrections Bureau Chief acting as liaison between the Department Central Office and the Participating Youth Court.
- H. Full support for the decisions of the Chief Probation Officer in matters concerning their discretionary expenditure of allocated funds, provided those expenditures fall within ARM and Title 41 Chapter 5, Title 52 Chapter 5, and Title 53 Chapter 1 (part 2) of MCA.
- I. Directing fiscal savings generated through this Agreement by a Participating District back to that District for discretionary use provided that District submits a plan for the expenditure of such funds for the next fiscal year to the Department prior to April 1<sup>st</sup> of the current fiscal year. The Department will review such plans with the Cost Containment Review Panel to determine if they are acceptable and constitute appropriate lower cost and less restrictive community alternatives

and/or placements. The decision of the Cost Containment Review Panel in this matter may be appealed only to the Director of the Department.

- a. Upon the request of a Participating District, the Department may distribute up to 50% of projected fiscal savings (Prevention Incentive Funds (PIF)) beginning April 1<sup>st</sup> of the fiscal year by inter-unit journal to the Youth Intervention and Prevention Account with approval of the Cost Containment Panel. Within ninety (90) days following the end of the fiscal year, up to 90% of the total projected surplus generated within the Participating District shall be distributed by inter-unit journal to the Youth Intervention and Prevention Account upon request. The Department shall hold the balance in reserve until the fiscal year placement costs are finalized. The Participating District shall reimburse the Department for any payments that the Department is required to make on behalf of the District after this final distribution. All expenditures of prevention incentive funds distributed by the office of the court administrator to a Participating District may be subject to audit by the Department and/or the Legislative Fiscal Auditor.

All remaining funds in the districts' initial budget allocation at the end of the fiscal year, once all expenditures have been reconciled, shall be transferred to the Youth Intervention and Prevention account at the Office of the Court Administrator according to House Bill 414 of the 59<sup>th</sup> legislative session. In accordance with 41-5-2003(3), the funds must be used for placement and early intervention alternatives.

- b. Prevention Incentive Funds from fiscal year 2005, distributed in fiscal year 2006, must be expended on approved programs and services prior to June 30, 2008, Prevention Incentive Funds from fiscal year 2006, distributed in fiscal year 2007, must be expended on approved programs and services prior to June 30, 2009.
- J. Continued staffing and cooperation with Participating Districts to gather and process data necessary for the continued adjustment and reallocation of appropriated funds if necessary prior to each fiscal year.

#### **4. ALLOCATION OF FUNDS**

Available funds shall be allocated to each of the 22 Judicial Districts within the State of Montana according to Sections 4 (A) and (B). Non-participating Districts shall expend such allocated funds only for placements or services approved by the Department. In consideration for the services to be provided, the Department shall authorize each Participating District discretionary spending authority for the Fiscal Year effective July 1, 2005 as follows:

- A. The 11th Judicial District's allocation of placement funds is \$419,607. This amount is 9.25% of the statewide total. The percentage is determined by a formula that includes 2004 Crime Data – Juvenile Offenses (incorporating 50% of status offenses), Free and Reduced Lunch Program for school year 2004-2005 to determine Poverty Status, and 2002 Population Census – Youth Ages 5-17. Placement costs funded by Federal or State Special Revenue sources will not be applied against this general fund allocation. Because the Department continues to manage the placement and funding of youth placed on parole status, and those youth requiring out of home care or placement due to overcrowding at a State Youth Correctional Facility, prior to allocation to the Judicial Districts, the total statewide juvenile placement allocations have been reduced by 10%

of general fund juvenile placement dollars after subtracting the one million (1,000,000) dollars reserved for cost containment funds.

- B. As a cost containment fund for possible access by any Judicial District, either Participating or Non-participating, in the event the District is unable to contain expenditures within the original allocation, the Department shall reserve a minimum of \$1,000,000 of the total juvenile placement budget. The Department shall establish a Cost Containment Panel to review, approve or deny any requests for contingency funding from this pool of reserved money. Decisions of the Panel may only be appealed to the Director of the Department. At the close of each fiscal year, the Cost Containment Panel shall determine the appropriate amount and method of allocation of unexpended cost containment funds to Participating Districts and shall determine the appropriate amount to be established for the next fiscal year's "Contingency Fund".
- C. The Department agrees to pay all appropriate Participating District expenditures within 60 days after receiving a correct invoice or entry into the CAPS payment system. Payments shall be documented and monthly reports of expenditures and services as entered into the payment system shall be provided to each Participating District.
- D. The Department agrees to hold harmless individual Participating Districts that exceed their allocation, provided the Participating District has operated in full accordance with all terms of this Agreement, Department Policies and Procedures, ARM, and Montana Statute.

## **5. TIME OF PERFORMANCE**

This Agreement is for a two-year period and shall take effect on July 1, 2005 and shall terminate on June 30, 2007, unless terminated earlier in accordance with the terms of this Agreement. The formula may change if determined by the cost containment panel and the contract amended as such.

## **6. LIAISON AND NOTICE**

- A. Liaison for the Department shall be the Youth Community Corrections Bureau Chief or a Department designee within each Region. Liaison for the Participating District shall be the Participating District's Chief Probation Officer or his/her designee, and the Supreme Court Administrator, or his/her designee.
- B. Written notices or complaints from either party will first be directed to the liaison for informal resolution.
- C. Unresolved complaints or disputes involving interpretation of this Agreement shall be referred to the Division Administrator of the Department of Corrections, Youth Services Division. The Administrator's finding may be appealed to the Director of the Department of Corrections, whose decisions shall be accepted by all parties as final.

**7. OWNERSHIP AND PUBLICATION OF MATERIALS**

All materials, developed or utilized by the Participating District in their performance under this Agreement shall be the joint property of Participating District and the Department.

**8. HOLD HARMLESS AND INDEMNIFICATION**

- A. Participating District agrees to be financially responsible (liable) for any audit exceptions or other financial loss to Department due to the negligence, intentional acts, or failure for any reason to comply with terms of this contract.
- B. Participating District agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, and causes of action of any kind or character, including the cost of defense thereof, arising in favor of Participating District employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omission of Participating District and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

**9. ACCESS AND RETENTION OF RECORDS**

- A. Participating District is required to maintain reasonable records of performance of duties pursuant to this Agreement.
- B. Participating District agrees to provide Department, the Legislative Auditor, or their authorized agent with access to the Participating District's records concerning this Agreement.
- C. Participating District agrees to create and retain all records supporting the services rendered for a period of three years after completion of this Agreement or the conclusion of any claim, litigation, or exception relating to this Agreement taken by the State of Montana or a third party.

**10. TERMINATION AND DEFAULT**

- A. Department may, by written notice to the Participating District, terminate this Agreement in whole or in part at any time the Participating District fails to perform as required in this Agreement.
- B. The termination of this Agreement shall not limit any party's pursuit of remedies provided in this Agreement or otherwise available under the laws of the State of Montana.
- C. A jurisdiction that has not previously participated in the program may elect to participate in the program prior to the start of a new biennium. Participation must be for a complete biennium. A jurisdiction may elect to discontinue participation in future bienniums upon 3 months' written notice to the Department prior to the beginning of the next biennium per Section 41-5-130(4), MCA.
- D. At its sole discretion, Department may terminate this Agreement, exercising good faith, if available funding is reduced.

**11. COMPLIANCE WITH LAWS**

Participating District must, in performance of work under the Contract, fully comply with all applicable federal, state, or local laws, rules and regulations, including the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by Participating District subjects subcontractors to the same provision. In accordance with Section 49-3-207, MCA, Participating District agrees that the hiring of persons to perform the Contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by persons performing the Contract.

**12. LIMITS OF AGREEMENT**

This Agreement contains the entire agreement between the parties and no statement, promises or inducements made by either party or agents thereof which are not contained in the written Agreement shall be binding or valid. This Agreement shall not be enlarged, modified or altered except upon written agreement signed by all parties to the Agreement.

**13. CHOICE OF LAW AND VENUE**

The laws of Montana govern this Contract. The parties agree that any mediation, arbitration or litigation concerning this Contract must be brought in the 11th Judicial District in and for the County(ies) of Flathead, State of Montana, and each party shall pay its own costs and attorney fees (Ref. 18-1-401, MCA).

**14. ARBITRATION**

Subject of exhaustion of the internal dispute resolution process set forth in Section 6, any claim arising out of, or related to, this Contract shall be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Judgment on the award rendered by the Arbitrator may be entered in any court having jurisdiction thereof.

**15. COMPLETED CONTRACT**

The Department cannot disburse any payments under this Agreement or approve CAPS expenditures pursuant to this Agreement until a fully executed original is returned to, Department of Corrections, Fiscal Bureau, P.O. Box 201301, Helena, Montana 59620-1301.

**SIGNATURE**

**DEPARTMENT**

\_\_\_\_\_  
KAREN DUNCAN  
Youth Community Corrections Bureau Chief

\_\_\_\_\_  
Date

\_\_\_\_\_  
STEVE GIBSON  
Youth Services Division Administrator

\_\_\_\_\_  
Date

**PARTICIPATING DISTRICT**

\_\_\_\_\_  
Chief Probation Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Judicial District Youth Court Judge

\_\_\_\_\_  
Date

**NON-PARTICIPATION ELECTION**

\_\_\_\_\_  
Chief Probation Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Judicial District Youth Court Judge

\_\_\_\_\_  
Date

Reviewed for Legal Content by:

\_\_\_\_\_  
Legal Counsel, Department of Corrections

\_\_\_\_\_  
Date

## CONTRACT AMENDMENT CONTRACT #06-030-YSD

THIS CONTRACT AMENDMENT (**Amendment #1**) is made and entered into by and between the Montana Department of Corrections (DEPARTMENT) 1539 11th Ave., Helena, Montana 59620-1301 and **11th Judicial District** (CONTRACTOR) 800 S. Main, Kalispell, MT 59901 and is effective upon receipt of all signatures.

WHEREAS, the parties have entered a Contract with an original effective date of July1, 2005 and Section 12 provides that the parties may modify their agreement in writing.

NOW THEREFORE, the parties agree to amend the Contract as follows (**new language underlined, old language interlined**):

### 3. DUTIES/RESPONSIBILITIES OF THE DEPARTMENT

The Department agrees to provide the following:

- A. ~~Allocation of available funding based on 2004 Crime Data — Juvenile Offenses (incorporating 50% of status offenses), Free and Reduced Lunch Program for school year 2004-2005 to determine Poverty Status, and 2002 Population Census — Youth Ages 5-17.~~ Allocation of available funding based on unduplicated youth and number of intakes for 07/01/05 – 05/31/06 (annualized). The Youth Services Division will provide each participating District with the applicable data and allocation formula used. ~~Second-year funding and allocations may be readjusted as necessary.~~ Funding shall be for the purpose of funding direct services to youth referred to or committed to the Youth Court. Placement services, intervention and diversion services, and development of community programs provided to youth and families through the Juvenile Probation Office shall also be funded from this Participating District allocation. The Department may only withhold funding or payment approval from a Participating District if the Department finds that the Participating District has been or is in substantial non-compliance with MCA, ARM, Department Policies and Procedures, or this Agreement.
- I. Directing fiscal savings generated through this Agreement by a Participating District back to that District for discretionary use provided that District submits a plan for the expenditure of such funds for the next fiscal year to the Department prior to April 1<sup>st</sup> of the current fiscal year. The Department will review such plans with the Cost Containment Review Panel to determine if they are acceptable and constitute appropriate lower cost and less restrictive community alternatives and/or placements. The decision of the Cost Containment Review Panel in this matter may be appealed only to the Director of the Department.
  - a. No Changes
  - b. Prevention Incentive Funds from fiscal year 2005, distributed in fiscal year 2006, must be expended on approved programs and services prior to June 30, ~~2008~~ 2007, Prevention Incentive Funds from fiscal year 2006, distributed in fiscal year 2007, must be expended on approved programs and services prior to June 30, ~~2009~~ 2008.

#### 4. ALLOCATION OF FUNDS

Available funds shall be allocated to each of the 22 Judicial Districts within the State of Montana according to Sections 4 (A) and (B). Non-participating Districts shall expend such allocated funds only for placements or services approved by the Department. In consideration for the services to be provided, the Department shall authorize each Participating District discretionary spending authority for the Fiscal Year effective July 1, 2005 2006 as follows:

- A. ~~The 11th Judicial District's allocation of placement funds is \$419,607. This amount is 9.25% of the statewide total. The percentage is determined by a formula that includes 2004 Crime Data — Juvenile Offenses (incorporating 50% of status offenses), Free and Reduced Lunch Program for school year 2004-2005 to determine Poverty Status, and 2002 Population Census — Youth Ages 5-17. The 11th Judicial District's allocation of placement funds is \$522,267.00. This amount is 11.51% of the statewide total. The percentage is determined by a formula that includes unduplicated youth and number of intakes for 07/01/05 – 05/31/06 (annualized).~~ Placement costs funded by Federal or State Special Revenue sources will not be applied against this general fund allocation. Because the Department continues to manage the placement and funding of youth placed on parole status, and those youth requiring out of home care or placement due to overcrowding at a State Youth Correctional Facility, prior to allocation to the Judicial Districts, the total statewide juvenile placement allocations have been reduced by 10% of general fund juvenile placement dollars after subtracting the one million (1,000,000) dollars reserved for cost containment funds.

This constitutes the Amendment to the Contract. All other provisions contained in the original Contract, as amended, shall remain unchanged.

**SIGNATURE**

***DEPARTMENT***

\_\_\_\_\_  
KAREN DUNCAN  
Youth Community Corrections Bureau Chief

\_\_\_\_\_  
Date

\_\_\_\_\_  
STEVE GIBSON  
Youth Services Division Administrator

\_\_\_\_\_  
Date

***PARTICIPATING DISTRICT***

\_\_\_\_\_  
Chief Probation Officer

\_\_\_\_\_  
Date

\_\_\_\_\_  
Judicial District Youth Court Judge

\_\_\_\_\_  
Date

Reviewed for Legal Content by:

\_\_\_\_\_  
Legal Counsel, Department of Corrections

\_\_\_\_\_  
Date